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MOTION FILED

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No. 07-1080

IN THE

Supreme Court of the United States

THE GREATER BIBLE WAY TEMPLE OF JACKSON,
Petitioner,

v.

THE CITY OF JACKSON, *ET AL.*
Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF GRACE COMMUNITY CHURCH, LIGHTHOUSE COMMUNITY CHURCH OF GOD, THE MICHIGAN DISTRICT OF THE CHURCH OF GOD OF CLEVELAND, TENNESSEE, AND NORTHRIDGE CHURCH

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MOTION OF CHURCH OF GOD (CLEVELAND, TENNESSEE), GRACE COMMUNITY CHURCH, LIGHTHOUSE COMMUNITY CHURCH OF GOD AND NORTHRIDGE CHURCH FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Amici curiae the Michigan District of the Church of God (Cleveland, Tennessee), Grace Community Church, Lighthouse Community Church of God and NorthRidge Church respectfully request leave of this Court of file the following brief

in the above-captioned matter. In support of this motion, *amici curiae* state as follows:

Petitioner has granted its consent to the filing of this brief. However, Respondents did not consent to *amici's* request of March 4, 2008, necessitating the Court's consideration of this motion.

The Church of God is a religious society organized under and pursuant to the laws of the State of Tennessee as an ecclesiastical non-profit organization. With more than 6 million members worldwide, the Church of God is the second-largest Pentecostal denomination in the world. The interest of the Michigan District Church of God is in protecting the ability of its more than 150 churches in the State of Michigan to worship and minister freely wherever they may be located. One of its Michigan churches is Living Water Church of God, located in Meridian Township, Michigan, whose petition for a writ of certiorari is now pending before the Court.

Grace Community Church ("Grace") was originally established in 1996 in New Haven, Michigan, to provide a place of worship for those who "just didn't fit in" to a normal church setting. The primary purpose of Grace is to assist men and women who have turned to alcohol, drugs, go into debt or even try to commit suicide in an effort to hide what they view as the inadequacies of their existence. Grace provides counseling and a

supportive environment to help those who need guidance after they leave a treatment facility. Grace is not a treatment facility, but rather simply an alcohol and drug free living environment which provides an opportunity for recovering individuals to live as a family unit with on-site counselors. Grace was originally granted a permit to operate a community center in Lenox Township, Michigan, but the township later revoked the permit. Grace has relied on RLUIPA to vindicate its rights.

Lighthouse Community Church of God ("Lighthouse") is a small historic African-American church presently located in Redford Township, Michigan. It ministers to, among others, the elderly and disabled. Lighthouse was involved in a landmark RLUIPA lawsuit involving the City of Southfield, Michigan. As Lighthouse felt the direct effect of discrimination by a large City and ultimately won a protracted legal battle, the Church has a continued interest in assuring that the law is equally applied to all churches and religious organizations within Michigan.

NorthRidge Church ("NorthRidge") is a large Christian non-denominational church located in Plymouth Township, Michigan, serving the needs of many in the southeastern Michigan area. NorthRidge provides a place for Christians to worship together and pray and engages in many ministries, including ministries to the elderly and disabled. NorthRidge is currently involved in a contentious RLUIPA case regarding its use of its

property in Plymouth Township, Michigan to enable it to implement plans that are essential to its religious mission.

The unique perspectives and arguments set forth in the brief following demonstrate that the *amici* will be able to "bring[] to the attention of the Court relevant matter not already brought to its attention by the parties" that will be "of considerable help to the Court." Supreme Court Rule 37.1.[1]

For the foregoing reasons, the motion for leave to file the attached brief *amici curiae* should be granted.

Respectfully submitted,

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March 14, 2008

[1] The author of this brief has litigated, lectured, and published on issues related to RLUIPA and land use and zoning throughout the United States. He is co-chair of the of the American Bar Association, State and Local Law Section, RLUIPA Committee and Government Operations Committee, a life member and fellow of the American Bar Foundation, a member of both the American and Michigan Planning Association. The arguments presented here are not attributable to those organizations.

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BRIEF *AMICI CURIAE* OF THE MICHIGAN DISTRICT OF THE CHURCH OF GOD (CLEVELAND, TENNESSEE), GRACE COMMUNITY CHURCH, LIGHTHOUSE COMMUNITY CHURCH OF GOD AND NORTHRIDGE CHURCH

The Church of God (Cleveland, Tennessee), Grace Community Church, Lighthouse Community Church of God, and NorthRidge Church submit this

brief *amicus curiae* in support of Petitioner pursuant to Rule 37.2 of this Court.[2]

Amici believe that their experiences in this area of the law will enable them to aid the Court in understanding the extent of division among Michigan State and Federal Courts, and put a face on the human cost of the *Greater Bible Way* decision, for purposes of deciding whether to grant the writ in this case.

SUMMARY OF THE ARGUMENT

The term "substantial burden" in RLUIPA has confused and divided lower courts since it first appeared in the Act. The legislative history of the Act reveals that Congress made a deliberate choice not to define "substantial burden," but rather allow courts to utilize that definition from this Court's jurisprudence starting with *Sherbert v. Verner*, 374 U.S. 398 (1963). Religious groups – especially religious minorities or those associated with racial or ethnic minorities – have paid a heavy price for that confusion, especially in land-use permitting decisions.

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[2]No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their members made any monetary contributions to the preparation or submission of this brief.

The confusion surrounds the following questions. First, in general, what is a "substantial burden," and in particular, does it include discretionary systems for deciding whether to grant zoning permits to religiously motivated land uses? Second, there is a split in authority in Michigan as to what a "substantial burden" is, or is not. The Michigan Supreme Court holding in *Greater Bible Way* that the land use denial did not substantially burden the church is in direct conflict with decisions from the United States Court of Appeals, including the Sixth Circuit's recent decision in *Living Water Church of God v. Charter Township of Meridian,* ____ F.3d ___, (2007 WL 4322157) (6th Cir., Dec. 13, 2007) which is also the subject of a petition for writ of certiorari.

These questions have had a direct and substantial impact on churches and other houses of worship in the City of Jackson, Jackson County and the state of Michigan as a whole. As set forth in this brief, the City of Jackson, Jackson County and the State of Michigan are in the midst of a single state recession.[3] Moreover, state funding has been dramatically cut to local governments and has been eliminated for the most part for counties. There has been no local government building of senior housing.

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[3]Louis Aguilar, "Economist: Michigan in fourth year recession," *The Detroit News* (Jan. 30, 2008).

At the same time, Michigan's aging population continues to increase. According to recent trends, more than one in five individuals from the State of Michigan will be entering their senior years. There is, therefore, a real need within the State of Michigan, the County of Jackson, and the City of Jackson for someone to meet this need.

Finally, because of the depressed state of the local economy, Michigan is a hotbed of religious land use litigation. The very first RLUIPA case arose out of Grand Haven, Michigan. Since then, Michigan's municipalities have taken a hard-line approach to any church attempting to locate, expand or use property within their borders, all in an attempt to retain property tax dollars.

In sum, given the confusion regarding the term "substantial burden," and the exceptionally important real world effects of this confusion within the State of Michigan, along with Michigan's anti-RLUIPA sentiment, represents a strong reason to grant the writ of certiorari in this case.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE GREATER *BIBLE WAY* DECISION HAS RESULTED IN DENYING A SIGNIFICANT NEED OF PROVIDING SENIOR AND DISABLED HOUSING TO A POOR COMMUNITY, COUNTY, AND DEPRESSED STATE.

With the oldest baby boomers turning 60 in 2006, there will be a drastic increase in the number of people over 65 in 2010 when the latest census will be conducted. The number of people over 65 is predicted to grow until 2030, where one in five Americans will be over 65 years old.[4] The number of seniors over 65 will soar to 71.5 million people by 2030, a mere 20 years from now, twice the number in 2000 according to *"The Maturing of America: Getting Communities on Track for an Aging Population,"* published by the National Association of Area Agencies on Aging (n4a) and funded by the MetLife Foundation. Sandy Markwood, the NAAAA CEO calls the report a "wake-up call" and recommends that communities and counties begin

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[4] *See* Patricia Butler, "Senior Housing - The Changing Landscape," *available at* http://www.seniorcitizensguide.com/detroit/articles/changing-landscape.htm

planning to address the major shift in demographics:[5]

> "To respond to the rapid rise in their aging population, communities will need to provide larger street signage, ***accessible housing***, age appropriate fitness programs, as well as lifelong learning and job re-training opportunities. Although targeted to an aging population, these services would improve the quality of life for citizens of all ages."

The growth in the number of senior citizens is expected to be accompanied by a dramatic increase in the senior-housing marking. According to the NIC, the senior housing market will more than triple, growing from an estimated 1.26 billion in 2005 to 4.9 billion by 2030.[7] A problem with the exponential rise in senior citizens is providing care at low cost. As seniors live longer, their funds will be stretched to the limit.

There is no dispute that Michigan is in a single state recession. The once proud and economically strong state associated with the automobile industry has been increasingly

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[5]Markwood, "The Maturing of America: Getting Communities on Track for an Aging Population," http://seniorliving.about.com/od/babyboomers/a/aging_population.htm:

[6] Id.

[7] Id.

economically devastated over the past 50 years.[8] The City of Jackson has been caught in a downward spiral of population loss, job loss and overall loss of community.[9] State, county and local governments have not been able to step up to the plate to assist its citizens in providing basic human needs.[10] Those human needs include housing for its seniors – one of the most important segments of this community.

Within the City of Jackson, 11.9% of its residents, amounting to 4,183 people, are over the age of 65.[11] To take of the aging population, the City of Jackson has a total of six senior assisted care homes with a total number of 599 beds.[12]

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[8] Citizens Research Council of Michigan, *Regional Approaches to Economic Development,* February 2007, Report 345; http://www.crcmich.org/PUBLICAT/2000s/2007/rpt345.pdf

[9] Id.

[10] Id.

[11] U.S. Census Bureau, American Fact Finder, http://factfinder.census.gov/servlet/GCTTable?_bm=n&_lang=en&mt_name=DEC_2000_SF1_U_GCTP5_ST7&format=ST-7&_box_head_nbr=GCT-P5&ds_name=DEC_2000_SF1_U&geo_id=04000US26

[12] U.S. Department of Health and Human Services, Medicare Website, Nursing Home finder, Jackson County, Michigan, http://www.medicare.gov/NHCompare/Include/DataSection/Questions/HomeSelect.asp?State=MI0%7C

Jackson County has seven nursing homes; four are profit, two are non-profit, and one is state owned.[13] Six of these facilities are located in the City of Jackson. None of the facilities are owned by the City of Jackson or Jackson County. More significantly, none have any religious affiliation to them. In the state of Michigan, there are less than 20 who have religious affiliations.[14]

In the case at hand, a Church has stepped up to the plate to take care of a constituency that the community has essentially ignored. Greater Bible Way is ready, willing and able to build senior housing for members of its congregation and members of its community. There is a demonstrated need for this use. As the bishop noted in his affidavit that is set forth in the record, these individuals will be given not only living assistance, but also a community to rely on, and religious assistance, instruction and spiritual guidance. To push away a public benefit, that is taking care of senior citizens without cost to the community at large, is simply ludicrous.

Michigan&County=26075%7CJACKSON&Type=County&pagelist=Home&dest=NAV%7CHome%7CSearch%7CHomeSelect%7CSearchCriteria&version=default&browser=IE%7C7%7CWinXP&language=English&CookiesEnabledStatus=True&search_dest=Nav%7CHome%7CSearch%7CSearchCriteria&StateAbbr=MI&StateName=Michigan

[13] Id.

[14] Id.

The location of the senior housing next to the Church is both a way for the Church to create a community to help seniors and disabled people and a necessary part of the religious nature of its ministry. The Michigan Supreme Court has effectively told the Church that it cannot continue its ministry in the location it desires because the City's interest trumps that of the Church. In other words, the Court focused on the needs of the City (preserving its tax base) as opposed to the religious needs of the Church, as Congress required in passing RLUIPA. When passing RLUIPA, Congress focused on a government's conduct in barring ministry to determine if a claim was present, not on the issue of whether a Church was totally barred from a community.

Michigan is a unique state in that while charitable giving to religious organizations has increased, (even though the state leads the nation in the highest rate of unemployment, foreclosures of homes and a protracted recession), communities within the state of Michigan are openly contemptuous toward religious entities and organizations. The contempt can barely be masked by these municipalities who are refusing to provide services and take care of those who are in need. These clearly are heroic leaders of their communities that are simply ignored. Congress clearly was acting to stop this harm when it enacted RLUIPA in 2000.

II. THIS COURT'S REVIEW IS NEEDED TO RESOLVE CONFUSION AMONG THE STATE AND FEDERAL COURTS REGARDING THE MEANING AND CONSEQUENCE OF THE TERM "SUBSTANTIAL BURDEN."

As noted in the Petition, the Michigan Supreme Court's decision in *Greater Bible Way* deepens the three-way split among the Federal Courts of Appeals and State Supreme Courts over RLUIPA's substantial burden standard. In *Greater Bible Way*, Michigan's Supreme Court has turned the words "substantial burden" into a phrase meaning a complete and total exclusion of religious activity within the city. Essentially, the Court has said that if *Greater Bible Way* can theoretically build senior apartments in a single location somewhere in the City of Jackson, then no substantial burden exists. 733 N.W. 2d at 750.

On the other hand, the Sixth Circuit's approach in *Living Water Church of God v. Meridian Township*, ___ F.3d ___ at ____, 2007 WL 4322157 defines a substantial burden as government action that "places substantial pressure on the claimant that violates its religious beliefs or effectively bars a church from using its property in the exercise of religious." Under this standard, the substantial burden is something more than exclusion from a particular piece of

property, but something less than exclusion from the entire jurisdiction.

The better approach is advocated by Petitioner, as set forth by Judge Posner in *Saints Constantine and Helen Greek Orthodox v. City of New Berlin,* 396 F.3d 895 (7th Cir. 2005) (Posner, J). Judge Posner focused more on the government's treatment of the religious applicant than on any resulted coercion or on the availability of alternatives. The Court held that a substantial burden may result from the "delay, uncertainty and expense" of multiple land use applications. *Constantine*, 396 F.3d at 901. This standard, which was rejected by the Michigan Supreme Court in G*reater Bible Way*, has been adopted by the Second, Seventh and Ninth Circuits, and approved in dicta in the First and Tenth Circuits.[15]

As a result of the decision of the Michigan Supreme Court in *Greater Bible Way*, litigants who file suit in Michigan state courts will be subject to a completely different standard (total exclusion standard) than those that file in Federal Courts using the *Living Water* standard, (coercion test).

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[15]See *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978, 989 (9th Cir., 2006); *Westchester Day School v. Village of Mamaronek*, 504 F.3d 338, 351 (2nd Cir., 2007); *Spratt v. Rhode Island Dept. of Corrections*, 482 F.3d 33, 38 (1st Cit., 2007); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 661-663 (10th Cir., 2006).

RLUIPA plaintiffs will have a strong incentive to bring their claims in federal court rather than state court, although the *Living Water* standard is not much better than the Michigan Supreme Court's standard. Similarly, since RLUIPA is sometimes raised as an affirmative defense in state court proceedings, plaintiffs seeking to avoid the defense would bring their lawsuits in state court to effectively bar the claim. If the matter did get to federal court, thereafter it would be barred from litigating the claim under principles of collateral estoppel as federal courts must give prior state court judgments the same affect those judgments would be given in the courts of the rendering state. 28 U.S.C. § 1783; *San Remo Hotel LP v. City of San Francisco,* 545 US 323, 341 (2005). Thus, if either party asserts federal issues in its complaint to affirmative defenses at the state court level, it could not continue those claims for subsequent litigation in the federal court. *Id.*

In sum, the Court of Appeals and state Supreme Courts are all over the page when it comes to the meaning and legal consequence of the term "substantial burden" within this Court's RLUIPA jurisprudence. That is more than reason enough to grant the writ of certiorari in this particular case, which raises those questions and exemplifies that confusion.

III. THE EXPERIENCE OF *AMICI* UNDER RLUIPA HAS CONFIRMED THE CLEAR AND CONVINCING EVIDENCE PRESENTED TO CONGRESS OF RELIGIOUS DISCRIMINATION

Amici have participated frequently and directly in disputes over the discretionary denial of zoning permits used for religious exercise. Their experience since the passage of RLUIPA confirms that those denials occur frequently, often imposing severe restrictions on religious exercise, often for vague or otherwise dubious reasons, and often with expressions of animus which, unfortunately, are insufficient alone to make out a claim of discrimination. This experience underscores that this Court needs to clear up the confusion regarding whether "substantial burden" should be construed to cover fact patterns like this one, because these are concrete and emerging consequences in the lives of thousands, if not millions, of Americans.

CONCLUSION

For the foregoing reasons, the writ should be granted.

Respectfully submitted,

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March 14, 2008

Counsel for Amici Curiae

Elks or the Boy Scouts, then Farmington Hills would have been well within their rights to deny the request. Indeed, the City of Jackson unquestionably could have denied this rezoning request if it had been made by a non-religious group.

The City of Jackson must be concerned with land use in their city. But there does not appear to have been any real effort to establish what their compelling governmental interests are and whether those can be accommodated. The City cannot simply state that the compelling governmental interest is established by the mere fact of zoning. Other less restrictive means should be considered as required under RUIPSA [sic] to satisfy whatever compelling interest the City has.

I am unable to grant summary disposition on this issue. This will require a factual record. At trial, the City of Jackson will have the burden of both establishing the compelling governmental interests and that is [sic] use the least restrictive means to achieve those interests, *Cheeman v Thompson*, 67 F3d 883, 885 (9th Cir 1995).

The Defendant's Motion for Summary Disposition is denied in total. Plaintiff's Motion for Summary Disposition is granted in part.

Trial is scheduled for Monday, May 12, 2003 at 9:30 a.m. There will be a final Pre-Trial Wednesday, May 7, 2003 at 10:00 a.m.

Dated: February 25, 2003

/s/ Chad C. Schmucker
Chad C. Schmucker, Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF JACKSON

THE GREATER BIBLE WAY TEMPLE OF JACKSON, a Michigan ecclesiastical corporation,

Plaintiff/Appellant,

v

CITY OF JACKSON; JACKSON PLANNING COMMISSION; AND JACKSON CITY COUNCIL,

Defendants/Appellees.

HONORABLE CHAD C. SCHMUCKER

FILE NO: 01-3614-AS

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FINAL ORDER

At a session of said Court, held in its Courtroom in the City of Jackson, County of Jackson, State of Michigan, on the 3 [sic] day of Sept [sic], 2003.

PRESENT: HONORABLE CHAD C. SCHMUCKER, Circuit Court Judge

This matter having come before the Court after proofs submitted by Plaintiff and Defendants on limited issues on July 14 and 15, 2003, and the Court having issued a ruling on the record in open Court on July 15, 2003, and the Court having heard oral arguments on Defendants' Motion for Relief from Judgment or Order Dated July 29, 2003, and the Court being fully advised in the matter;

IT IS HEREBY ORDERED that the Defendant's Motion for Relief from Judgment of Order dated July 29, 2003 is granted and the Court Order dated July 29, 2003 is vacated for the reasons stated on the record;

IT IS HEREBY FURTHER ORDERED that this Court's prior opinion dated February 25, 2003, is reaffirmed and is a final order for purposes of MCR 7.207(7)(a)(i);

IT IS HEREBY FURTHER ORDERED that the Defendants have imposed or implemented a land use regulation in a manner that imposes a substantial burden on the religious exercise of Plaintiff;

IT IS HEREBY FURTHER ORDERED that the Defendants have failed to demonstrate that the imposition of a substantial burden on the religious

exercise of Plaintiff was in the furtherance of a compelling governmental interest;

IT IS HEREBY FURTHER ORDERED that the Defendants have violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC Section 2000cc, *et seq.*, for those reasons stated on the record;

IT IS HEREBY FURTHER ORDERED that this Final Order applies to lots 62 through 66, and lots 89 through 92, inclusively, of Hillside Subdivision, as recorded in Liber 4 of Plats, Page 24, of the Jackson County Records[1];

IT IS HEREBY FURTHER ORDERED that the Defendants, their officers, agents servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are

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[1] Hereinafter referred to as "said lots."

enjoined from interfering, stopping or preventing Plaintiff from building the originally proposed housing plan of 32 units, or any plan with a lesser burden, on said lots that comports with R-3 zoning as defined in the Jackson Coty [sic] Code;

IT IS HEREBY FURTHER ORDERED that the Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are enjoined from implementing or imposing a land use regulation in a manner that imposes a substantial burden on the religious exercise of Plaintiff in its development and use of said lots, absent compelling governmental interests;

IT IS HEREBY FURTHER ORDERED that this Order is a final order for purposes of MCR 7.202(7)(a)(i);

IT IS HEREBY FURTHER ORDERED that Plaintiff is the prevailing party;

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction to enforce this Order.

Dated: _____, 2003

/s/ Chad C. Schmucker
Chad C. Schmucker, Circuit Judge

9/3/03

Michigan Supreme Court

Order

September 18, 2007

Rehearing No. 537

5 November 2006

130194
130196

SC: 130194, 130196
COA: 250863, 255966
Jackson CC: 01-003614-AS

THE GREATER BIBLE WAY TEMPLE OF JACKSON,
Plaintiff-Appellee,

v

CITY OF JACKSON, JACKSON PLANNING COMMISSION, and JACKSON CITY COUNCIL,
Defendants-Appellants.

In this cause, a motion for rehearing is considered and it is DENIED.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 18, 2007 /s/ Corbin R. Davis

106th CONGRESS

2d Session

S. 2869

AN ACT

To protect religious liberty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS-

(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION- This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION-

(1) EQUAL TERMS- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) NONDISCRIMINATION- No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) EXCLUSIONS AND LIMITS- No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE- No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION- This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION- A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION- If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) FULL FAITH AND CREDIT- Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS' FEES- Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--

(1) by inserting `the Religious Land Use and Institutionalized Persons Act of 2000,' after `Religious Freedom Restoration Act of 1993,'; and

(2) by striking the comma that follows a comma.

(e) PRISONERS- Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT- The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) LIMITATION- If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not

lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

(a) RELIGIOUS BELIEF UNAFFECTED- Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) RELIGIOUS EXERCISE NOT REGULATED- Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED- Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED- Nothing in this Act shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE- A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW- With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) BROAD CONSTRUCTION- This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) NO PREEMPTION OR REPEAL- Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of

religious exercise as, or more protective of religious exercise than, this Act.

(i) SEVERABILITY- If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the `Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term `granting', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS- Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended--

(1) in paragraph (1), by striking a State, or a subdivision of a State' and inserting or of a covered entity';

(2) in paragraph (2), by striking term' and all that follows through includes' and inserting `term covered entity' means'; and

(3) in paragraph (4), by striking all after `means' and inserting `religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'.

(b) CONFORMING AMENDMENT- Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking `and State'.

SEC. 8. DEFINITIONS.

In this Act:

(1) CLAIMANT- The term `claimant' means a person raising a claim or defense under this Act.

(2) DEMONSTRATES- The term `demonstrates' means meets the burdens of going forward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE- The term `Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT- The term `government'--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION- The term `land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY- The term `program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(7) RELIGIOUS EXERCISE-

(A) IN GENERAL- The term `religious exercise' includes any exercise of religion, whether or not

compelled by, or central to, a system of religious belief.

(B) RULE- The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE GREATER BIBLE WAY TEMPLE OF JACKSON, a Michigan ecclesiastical corporation,
Plaintiff/Appellant,

-v-

CITY OF JACKSON; JACKSON PLANNING COMMISSION; AND JACKSON CITY COUNCIL,
Defendants/Appellees.

HON: ALEXANDER C. PERLOS

FILE NO: 01-3614-AS

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CLAIM OF APPEAL AND CLAIM IN VIOLATION OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

NOW COMES, The Greater Bible Way Temple of Jackson, by and through its attorneys, HUBBARD, FOX, THOMAS, WHITE & BENGTSON, P.C., and claim an appeal from the determination of the Defendants, and claim a violation of RLUIPA, saying in support as follows:

1. Plaintiff/Appellant, The Greater Bible Way Temple of Jackson (hereafter The Greater Bible Way Temple) is a religious organization located at 322 Madison Street, Jackson, Jackson County, MI 49202.

2. Defendant City of Jackson is a Michigan City, situated in Jackson County, that has promulgated and enforces its own City Zoning Ordinance.

3. Defendant Jackson Planning Commission is a board authorized under the City of Jackson Ordinances to address and issue recommendations pertaining to zoning issues, and more particularly, applications for rezoning.

4. Defendant Jackson City Council is the Council for the City of Jackson, authorized by City Ordinance to enforce and otherwise make decisions under the City of Jackson's zoning code.

5. This matter is within the jurisdiction of this Court pursuant to MSA 5.2963(23a). Moreover, jurisdiction of this Court is also established by the City of Jackson's Code, Section 28-244(f).

COUNT I
CLAIM OF APPEAL

6. The Greater Bible Way Temple is a large church located in the City of Jackson with a congregation of 500+, and one which has done a considerable amount of good for the City of Jackson and its citizens.

7. The Church is located at 322 Madison Street, and owns an adjacent 1.13 acre lot bounded by Blackstone, Jefferson, Lansing and Madison streets.

8. In part, the Mission of The Greater Bible Way Temples is as follows: "The Greater Bible Way Temple stands for truth, the promotion of the Gospel of Jesus Christ through the Apostolic Doctrine, and an exceptional level of service to the community. This includes housing, employment, consulting and supports as determined appropriate in fulfilling our Mission." (emphasis added)

9. The above Mission is so strongly integrated into their belief that the Mission is printed on the church's letterhead.

10. In keeping with their Mission, the Greater Bible Way Temple submitted a site plan to the City of Jackson to build and develop a 32 unit

apartment building to house, in part, elderly and disabled persons.

11. In order to comply with the City of Jackson's classification of zoning, the property was required to be zoned R-2 (multiple family residential).

12. Since the property was zoned R-1 (single family residential), The Greater Bible Way Temple filed an application with the Jackson Planning Commission, requesting a zoning change from R-1 to R-3.

13. On or about April 3, 2001, the Jackson Planning Commission's staff drafted a written recommendation denying the request. (See Exhibit 1)

14. On or about April 11, 2001, the Jackson Planning Commission held a public meeting, which resulted in a denial of the rezoning request. (See Exhibit 2)

15. On or about April 24, 2001, the Jackson City Council convened a public hearing to consider The Greater Bible Way Temple's rezoning request. The Council voted to delay action until the next meeting. (See Exhibit 3)

16. On or about May 8, 2001, the Jackson City Council voted to concur with the Jackson Planning Commission's recommendation and denied the rezoning request. (See Exhibit 4)

17. The City of Jackson/Jackson City Council/Jackson Planning Commission never supplied a written denial to The Greater Bible Way Temple. Pursuant to Section 28-244(f), a written denial was required. Moreover, Due Process mandates that a written denial be given so that a party may be fully informed of the City's action and their procedural rights under law.

18. Plaintiff's attorneys requested a written decision, and on or about June 26, 2001, the Attorney for the City of Jackson provided a written denial of the rezoning request. (See Exhibit 5)

19. It is widely known that there is a shortage of housing within the City of Jackson and surrounding area.

20. There is an even greater shortage of housing for the disabled and elderly with the City of Jackson and surrounding area.

21. The proposed project would have provided a recognizable and substantial benefit to the ultimate users of the project and to the community.

22. In order to continue with their Mission, and to find a resolution of the unreasonable denial of the City, The Greater Bible Way Temple submitted a 20 unit planned residential development to the City Planning Commission. The representatives of The Greater Bible Way Temple were told that it would not be approved, and upon information and belief, the City will formally deny the request.

23. Section 28-137 of the Jackson Zoning Code provides a clear avenue for the development of the project proposed by The Greater Bible Way Temple. The development plan clearly meets the "objectives" set forth in Section 28-137(b), and does not violate any of the provisions contained in 28-138.

24. Planned unit residential developments contemplated under Sections 28-137 and 28-138 give the Defendants the power to approve the submitted development without rezoning the property.

25. The Defendants failed to consider the submitted cite plan as a planned unit residential development and properly analyze it under Section 28-137 of the zoning code.

26. Had it done so, the proposed project would have been approved and rezoning would not have been required.

27. Various demeaning, negative and prejudicial comments were made by persons making up the Defendants' boards, which would give rise to the conclusion that the Defendants acted in religious discrimination.

28. The rezoning request, and proposed project, are consistent with the intent, spirit and purposes of the City of Jackson Zoning Ordinances and are not contrary to public use.

29. The rezoning request would not have caused a substantial adverse effect on property

values in the immediate vicinity of in the zoning district.

30. The rezoning would not result in an unreasonable increase in the use of public services, facilities and utilities, and would not have placed an unreasonable burden upon the subject and/or surrounding land and/or property owners.

31. The decisions of the Jackson City Council and Jackson Planning Commission were not supported by competent, material and substantial evidence on the record.

32. The decisions of the Jackson City Council and Jackson Planning Commission were arbitrary, capricious and without foundation under the City of Jackson Zoning Ordinances or applicable Michigan law.

WHEREFORE, Plaintiff/Appellant The Greater Bible Way Temple requests that this Court issue a judgment in their favor and against the Defendants reversing the decision of Defendants and requiring them to issue the rezoning as requested. If deemed necessary, Plaintiff/Appellant requests that this Court remand the case to the Defendants for a proper determination under Section 28-137 of the City Zoning Code as it pertains to Planned Unit Residential Developments.

COUNT II
VIOLATION OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

33. The above allegations are repeated and realleged as if set forth anew.

34. The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC 2000cc, et al., is applicable to the facts herein.

35. RLUIPA, 42 USC 2000cc, provides in pertinent part:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:
>
> (A) is in furtherance of a compelling governmental interest; AND
>
> (B) is the least restrictive means of furthering that compelling governmental interest
>
> This subsection applies in any case in which--
> (C) the substantial burden imposed in the implementation of a land use regulation or system of land use regulations, under which a government make, or has in place formal or

informal procedures or practices that permit government to make, individualized assessments of the proposed uses for the property involved.

36. The actions of the Defendants have imposed a substantial burden on The Greater Bible Way Temple's exercise of religion and in the furtherance of their Mission as previously stated herein.

37. The Defendants do not have a compelling governmental interest in denying the rezoning request. In fact, given the lack of affordable and quality housing within the City of Jackson, the Defendants [sic] compelling government interest is to see that projects such as the one proposed are encourage [sic] and built.

38. The Defendants have failed to use the least restrictive means of furthering any interest that they may have.

39. The Greater Bible Way Temple has been substantially burdened and cannot continue its Mission to provide housing to disabled and elderly persons.

40. The location of the proposed residential development so closely connected to the existing church provides a clear benefit to the church and to the disabled and elderly occupants of the proposed residential units.

41. The Joint Statement of Senator Hatch and Senator Kennedy on RLUIPA of 2000, 146 Congressional Record at S774, S775 demonstrates the underlying basis of RLUIPA, and displays the underlying religious discrimination of the Defendants:

> The hearing record compiled massive evidence that [the right to build, buy or rent space to assemble for religious purposes] is frequently violated. Churches in general, and new, small or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation....
>
> Sometimes, zoning board members or neighborhood residents explicitly offer race of religions as the reason to exclude a proposed church.... **More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or 'not consistent with the city's land use plan.'**
>
> * * *
>
> The hearing record demonstrates a widespread practice of individualized decisions to grant or refuse permission to use property for religious purposes. These individualized assessments readily lend themselves to discrimination, and they also make it difficult to prove discrimination in any individual case.

42. The decision process of the Defendants is entirely discretionary and violates Plaintiff's right of free exercise and amounts to religious discrimination.

WHEREFORE, Plaintiff/Appellant The Greater Bible Way Temple requests that this Court issue a judgment in their favor and against the Defendants reversing the decision of Defendants and requiring them to issue the rezoning as requested. It further requests that this Court apply RLUIPA and determine that the Defendants violated it and require the Defendants to issue the rezoning as requested. If deemed necessary, Plaintiff/Appellant requests that this Court remand the case to the Defendants for a proper determination under Section 28-137 of the City Zoning Code as it pertains to Planned Unit Residential Developments.

Respectfully submitted,

HUBBARD, FOX, THOMAS, WHITE & BENGTSON, P.C.

By: /s/ Brian W. Surgener
Brian W. Surgener (P46229)
Phillip M. Stevens (P21007)
Attorneys for Plaintiff

City of Jackson Code of Ordinances

Sec. 28-38. R-3 multiple-family residential district.

The multiple-family residential district is established for multiple-family residential use. The regulations are designed to protect and promote a more intensive residential character than the R-1 and R-2 districts and to prohibit all commercial activities. All types of residential structures are permitted, but the predominant type will be multiple-family dwellings, including apartments, townhouses and conversations of single-family dwellings into multiple units.

(Code 1977, § 5.33)

Sec. 28-183. Procedure for change.

The application for any proposed zoning change shall be directed to the city council on forms prescribed for such purpose, accompanied by sufficient information, so as to assure the fullest presentation of facts for the permanent record.

(1) *By application.* Any person, firm or corporation desiring a change in the zoning classification of property shall file with the city clerk an application for zoning change. When the application for zoning change appears to be in accordance with public necessity, convenience, safety and the general welfare of the city, the city council shall refer such application to the city planning commission.

a. *Notice of hearing.* The city planning commission shall then hold a public hearing on such proposed amendment, supplement or change as set forth in the application, notice of the time and place of which shall be given not less than fifteen (15) days prior to such hearing, by one (1) publication in a newspaper of general circulation in the city, and by registered mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the district affected, that registers its name and mailing address with the city clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained.

b. *Additional notice of hearing.* In addition to the published notice required by law, the city planning commission shall give notice of the time, place and purpose of its public hearing to be held on the proposed amendment, supplement or change, by mailing written notice of same to the last known address of the owners and occupants, as shown on the records of the assessor, of all properties lying within three hundred (300) feet of any part of the property, the zoning classification of which is proposed to be changed.

Failure to send notice by mail to any such property owner where the address of such owner is not a matter of record in the assessor's office shall not invalidate any proceedings in connection with the proposed amendment, supplement or change. When such amendment, supplement or change does not include any change of district boundaries or classification of property, this additional notice of hearing shall not be required.

c. *Public hearing.* The city planning commission shall adopt rules and regulations for the conduct of public hearings consistent with law and the provisions of this Code.

d. *Procedure following public hearing.* After the public hearing on such amendment, supplement or change, the city planning commission shall make its report. Such report shall be by resolution of the city planning commission carried by the affirmative votes of the majority of members in attendance. Such amendment, supplement or change, with report, shall then be certified in writing to the city council and to the county register of deeds.

e. *Action by city council.* Such amendment, supplement, or change, accompanied by the report of the city planning commission, shall then be presented to the city council. The city council shall hold a public hearing on such proposed amendment, supplement, or change pursuant to the publication and notice requirements prescribed in this section. Following such public hearing, such amendment, supplement or change may be adopted or denied only by the affirmative votes of not less than four (4) members of the city council. [Amended November 25, 2003.]

f. Upon presentation of a protest petition meeting the requirements for this section, such amendment, supplement or change which is the object of the petition shall be passed only by a two-thirds (2/3) vote of the city council. The protest petition shall be presented to the city council before final legislative

action on the amendment, and shall be signed by one (1) of the following:

1. The owners of at least twenty (20) percent of the areas of land included in the proposed change, excluding publicly owned land.

2. The owners of at least twenty (20) percent of the area of land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change, excluding publicly owned land.

g. Whenever a proposed amendment, supplement or change has not been approved by the city planning commission and the city council concurs by not adopting it, such amendment, supplement or change shall not be resubmitted to the city council for at least one (1) year from the date of the city council denial, excepting when it is established to the satisfaction of the city council that there has been a material change in circumstances justifying reconsideration.

(2) *By resolution.* Whenever deemed necessary for public convenience, general welfare or good zoning practice, the city planning commission, or the city council may initiate an amendment, supplement or change in the form of a resolution for zoning change provided it is adopted by a majority vote of the full membership of either of the respective commissions. Such proposed amendment, supplement or change to this chapter shall then be handled in accordance with

the same procedure for filing an application for zoning change.

(Code 1977, § 5.262; Ord. No. 2003.20, § 1, 11-25-03)